In *Piare Dusadh*[11] the sentences which were confirmed by the legislature had been passed by special criminal courts which the court held had no jurisdiction but which were subsequently validly conferred with jurisdiction.

See also an Australian case, the *Federal Commissioner of Taxation* v. *Munro*[12] mentioned by Spens C.J. at pages 8 and 9.

The instant case may be contrasted with *Basanta Chandra* v. *Emperor.*[13] There the legislature provided that proceedings pending in the courts challenging the validity of detention orders shall be discharged and it was held that that was an unlawful exercise by the legislature of judicial power. Spens C.J. said at page 90:

"The distinction between a 'legislative' act and a 'judicial' act is well known, though in particular instances it might not be easy to say whether an act should be held to fall in one category or the other. The Legislature is only authorised to enact laws. Some of the pending proceedings hit by clause (2) of section 10 may raise questions of fact and their determination may wholly depend upon questions of fact and not upon any rule of law, as for instance, when it is alleged that an order of detention was not really the act of the authority by whom it purports to have been made or that it was a *mala fide* order or one made by a person who has not been authorised to make it. A direction that such a proceeding shall be discharged is clearly a judicial act and not the enactment of a law. This question was discussed at some length in [*Piare Dusadh*]. The nature of the provision then considered was essentially different from clause (2) of section 10 of the present Ordinance. As explained in that judgment, the position there was that certain cases had in fact been tried by Tribunals instituted under an earlier Ordinance and decisions had been pronounced by those tribunals, but the jurisdiction of those tribunals was negatived by a decision of this court. The later Ordinance provided that those decisions should be treated as decisions of duly constituted Tribunals. Applying the test laid down in [*Federal Commissioner of Taxation* v. *Munro*] this court held that that did not constitute an exercise of judicial power by the ordinance-making authority. But here there has been no investigation or decision by any Tribunal which the legislating authority can be deemed to have given effect to. It is a direct disposal of cases by the Legislature itself."

Finally, whatever the features of the basic structure of the Constitution may be, it is our view that none of the amendments complained of and none of the impugned provisions of Act 216 have destroyed the basic structure of the Constitution; and it is for this reason that we find it unnecessary to express our view on the question whether or not Parliament has power to so amend the Constitution as to destroy its basic structure.

To summarise, our answers to the three issues raised are: first, Parliament have power to make constitutional amendments that are inconsistent with the Constitution. Secondly, Parliament may amend the Constitution in any way they think fit, provided they comply with all the conditions precedent and subsequent regarding manner and form prescribed by the Constitution itself and it is unnecessary for us to say whether or not Parliament's power of constitutional amendment extends to destroying the basic structure of the Constitution. Thirdly, Act 216 is constitutional. Whatever may be the features of the basic structure of the Constitution, none of the constitutional amendments complained of and none of the impugned provisions of Act 216 have destroyed the basic structure of the Constitution.

Order accordingly.

Solicitors: *Khoo & Sidhu.*

SU AH PING v. PUBLIC PROSECUTOR

[F.C. (Suffian L.P., Wan Suleiman F.J. and Hashim Yeop A. Sani J.) July 12 & August 21, 1979]

[Kuala Lumpur — Federal Court Criminal Appeal No. 35 of 1977]

Criminal Law and Procedure — Possession of pistols and ammunition — Pistols and ammunition recovered as a result of information given by appellant — Proof of exhibits — Exhibits handed over by Police Inspector to another Police Officer — Exhibits identified at trial by Police Inspector as things recovered at scene — Other officers who handled exhibits not called — No objection by defence — Ensuring no break in chain of evidence — Waste of judicial time — Conviction of appellant valid until quashed — Trial under Essential (Security Cases) Regulations, 1975 — Doubt as to validity of conviction — Validated by Emergency (Essential Powers) Act, 1979.

Constitutional Law — Accused tried under Essential (Security Cases) Regulations, 1975 — Regulations held to be void — Conviction not quashed — Regulations validated by Emergency (Essential Powers) Act, 1979 — Whether Act constitutional.

The appellant had been convicted of possession of four pistols and 175 rounds of ammunition and sentenced to death. In the course of his interrogation by the police, the appellant had led the police to the place where he hid the pistols and ammunition and the exhibits were found. The exhibits were subsequently handed over by Inspector Takbir to another police officer. At the trial Inspector Takbir produced the exhibits and identified them. No other police officers who had handled the exhibits were called to testify. No objection was raised by the defence. At the appeal it was argued that there was a break in the chain of evidence. It was also argued that as the Essential (Security Cases) Regulations, 1975 had been held to be invalid, the accused had been declared judicially innocent and in enacting the Emergency (Essential Powers) Act, 1979 Parliament in effect had purported to condemn the accused and therefore the Act was unconstitutional, null and void.

Held: (1) it is unnecessary to call evidence to ensure that there is no break in the chain of evidence. If the officer who picked up the object at the scene produced it and identified it as that very object that is enough and there is no need to call every other officer who handled it, unless there is doubt as to the identity;

(2) the appellant in this case had been convicted and the conviction had not been quashed. If there was any doubt as to the validity of the conviction, it has been validated by the Emergency (Essential Powers) Act, 1979 and thereafter it was subject to appeal in the ordinary way.

Cases referred to:-

(1) *Teh Cheng Poh* v. *Public Prosecutor* [1979] 1 M.L.J. 50.

(2) *Calvin* v. *Carr* [1979] 2 All E.R. 440, 446.

(3) *Indira Nehru Gandhi* v. *Raj Narain* A.I.R. 1975 S.C. 2299.

(4) *Phang Chin Hock* v. *Public Prosecutor* [1980] 1 M.L.J. 70.

The following cases were also referred to in argument: *Mohamad Yatim bin Abu Bakar* v. *Public Prosecutor* [1950] M.L.J. 57; *Sia Soon Suan* v. *Public Prosecutor* [1966] 1 M.L.J. 116; *Chong Yik* v. *Public Prosecutor* [1953] M.L.J. 92; *Wong Kok Keong* v. *Reg.* [1955] M.L.J. 13; *Marbury* v. *Madison* 1 Cra. 137; *Panama* (1935) 293 U.S. 338; (1935) 295 U.S. 495; *Shell Co. of Australia* v. *Commissioner of Taxation* [1931] A.C. 275, 295; *Bilston Corporation* v. *Wolverhampton* [1942] 2 All E.R. 447; *Hinds* v. *The Queen* [1967] A.C. 259; *Sri Sadasib Prakash Bramachari* v. *Orissa* (1956) S.C.R. 43, 58.

FEDERAL COURT.

Jagjit Singh (*K.C. Cheah* with him) for the appellant.

Sharkawi bin Alias (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Suffian L.P. (delivering the judgment of the Court): We dismissed this appeal and now give our reasons.

First, as regards the evidence — in our view there was clear evidence which if believed would entitle the learned trial judge to find the accused guilty, and as the learned judge applied the right test in considering the evidence for the defence, we were of the opinion that it would not have been right to interfere with his verdict; and we would like to deal only with Mr. Jagjit Singh's argument regarding proof of the exhibits.

The exhibits were four pistols and 175 rounds of ammunition and the accused was charged with having them under his control in a security area without lawful authority contrary to section 57(1) of the Internal Security Act, 1960.

The accused on June 4, 1976, after interrogation, during which he said that he had hidden four guns and many rounds of ammunition in two tins and a plastic bag in Kampong Hailam, led Inspector Takbir Ahmad and a police party to a place near a stream in that kampong. At the scene a spade was made available and the accused dug holes at three different places and in each hole the guns and ammunition were found, soaked in oil.

As is to be expected, on returning to the station Inspector Takbir handed the exhibits to another police officer, A.S.P. Kenny Woodworth PW4, who subsequently handed them over to the armourer for a report on whether the exhibits were serviceable or not. We do not know whether or not they were handed over directly to the armourer or through the hands of other police officers.

Nor do we know what happened to the exhibits subsequently, but at the trial Inspector Takbir produced them as the very things which had been recovered by him at the scene, and he also produced the armourer's report saying that the guns were serviceable.

The complaint before us was not that there had been no proof that the exhibits were serviceable, but simply that there was a "break in the chain of evidence", and the prosecution should have called as witnesses all the officers through whose hands the exhibits passed from Inspector Takbir to the armourer and back to the Inspector. We do not think there is merit in this point. The question was whether the exhibits the Inspector produced were the guns and ammunition he found at the scene, and as when he produced them as those very guns and ammunition there was no objection by the defence, it would have been a waste of judicial time to call all the intervening handlers. In our experience much judicial time is spent unnecessarily, notably in subordinate courts, in ensuring no break in the chain of evidence. In our judgment, if the officer who picked up an object at the scene produced it and identified it as that very object, that is enough, and there is no need to call every other officer who handled it.

For this reason it is desirable for a police officer who picked up an object that is easily marked such as a gun, to mark it well, in case it may be needed later on as an exhibit. There are, however, objects such as blood samples and the like that cannot be easily marked; it is only in the case of such objects that it may be necessary to call everybody who has handled it — then only if there is doubt as to identity.

The only other point raised by Mr. Jagjit Singh that we should deal with is constitutional and is as follows. The accused was charged with a security offence, tried, convicted and sentenced in accordance with the Essential (Security Cases) Regulations, 1975. On December 11, 1978, the Privy Council held in *Teh Cheng Poh* v. *Public Prosecutor*[1] that the regulations were *ultra vires* the Constitution and the trial in that case was a nullity, though the accused there had been correctly charged under the Internal Security Act. In January, 1979, Parliament enacted the Emergency (Essential Powers) Act, 1979 ("Act 216"). That Act was enacted under clause (5) of Article 150 of the Constitution. The Act purports to validate the regulations retrospectively to February 20, 1971. Subsection (3) of section 9 purports to validate convictions such as that suffered by the accused. It reads:

"(3) Any prosecution instituted, trial conducted, decision or order given, in respect of any person in any court, or any other proceeding whatsoever had, or any other act or thing whatsoever done or omitted to be done, under or by virtue of the Ordinance or any subsidiary legislation whatsoever made or purporting to have been made thereunder is declared lawful and thereby validated."

Mr. Jagjit Singh submitted that between the time when the Privy Council delivered their judgment on December 11, 1978, and some time in January, 1979, when Parliament enacted Act 216, the accused had been judicially declared innocent, and that when Parliament enacted section 9(3), the effect, he said, is that the legislature purported to condemn the accused as a guilty person when in fact he had been judicially declared innocent, that only judges can find the accused guilty and that the attempt by Parliament to condemn the accused is unconstitutional, null and void. Accordingly the conviction here cannot be supported.

With respect we do not agree with Mr. Jagjit Singh. The accused here was convicted by a court of law. A conviction is a conviction and remains one until quashed by a superior court, see *Calvin* v. *Carr*.[2] The accused's conviction has never been quashed. In *Teh Cheng Poh* only the conviction of the appellant therein was quashed by His Majesty on the advice of the Privy Council.

If there was any doubt as to the validity of the conviction of the accused herein, it has been validated by Act 216, in particular its section 9(3). Thereafter it is subject to appeal in the ordinary way.

There is no question of an innocent man being condemned by politicians in Parliament.

Nor incidentally is there any question of Parliament declaring a man innocent who has been found guilty by a court of law, as seems to be the case in *Indira Nehru Gandhi* v. *Raj Narain*[3] one of the cases cited by Mr. Jagjit Singh.

Whether or not Parliament should enact Act 216 is not for the courts to determine, but there is no doubt that Parliament has power to enact it. We have given our reasons in *Phang Chin Hock alias Ah Tee* v. *Public Prosecutor*.[4]

For the above reasons we dismissed this appeal.

Appeal dismissed.

Solicitors: *Jagjit Singh & Co.*